72D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
No. 1012

AMEND THE SUITS IN ADMIRALTY ACT

APRIL 7, 1932.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. MONTAGUE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 7238]

The Committee on the Judiciary, to whom was referred the bill H. R. 7238, after consideration, reports the same favorably with an amendment and recommends that the bill as amended do pass.

The committee amendment is as follows:

Page 2, line 15, after the word "provisions" strike out the period and quotation marks, insert a colon, and add the following language:

Provided further, That such prior suit must have been commenced within the statutory period of limitation for common law causes, which obtained in the court in which such prior suit was brought: *Provided further*, That there shall not be revived hereby any suit at law, in admiralty, or under the Tucker Act heretofore or hereafter dismissed for lack of prosecution after filing of suit: *And provided further*, That no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized hereunder.

The object of this bill is to correct a condition which could not have been foreseen and which was created by the unexpected interpretation of the admiralty act (14 Stat. 525, U. S. Code, title 46, secs. 741–752 enacted Mar. 9, 1920) by the United States Supreme Court. This interpretation was made nearly 10 years after the passage of the "suits in admiralty act," and held that the remedy provided by the act was exclusive in character.

The chief purposes which Congress sought to accomplish by the passage of the admiralty act were:

1. To free the United States Government from the embarrassment and necessity of putting up bonds in those cases where United States merchant vessels were seized and suits commenced in rem;

2. To enable the merchant vessels of the United States Fleet Corporation to compete for freights on an equal footing with other American and foreign merchant ships.

This was done by abandoning the immunity which the United States enjoyed from suits in personam against the Fleet Corporation for such acts as a private carrier could be sued for in the courts of this country.

For almost a decade after its enactment the admiralty act was generally interpreted by the Federal courts as leaving undisturbed such remedies in personam as claimants had prior thereto—that is to say, that suits could properly be instituted against the Fleet Corporation not only in the manner provided in the admiralty act, but also in the Court of Claims, or in the State and Federal courts under the common law, or in admiralty. The theory of the courts was that the admiralty act merely afforded an additional remedy in personam without affecting existing remedies in personam.

In this connection, Congress first legislated on the subject in the shipping act of 1916 (39 Stat. 728, c. 451) of which section 9 provides:

> Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien or other interest therein.

Thereafter our courts in many classes of action held that the Fleet Corporation had all the characteristics of a private corporation and was therefore amenable to suits in the same manner as a private corporation.

The leading case on the status of the Fleet Corporation under the shipping act of 1916 is perhaps that of Sloan Shipyards Corporation *v.* Emergency Fleet Corporation (258 U. S. 549), decided by the United States Supreme Court May 1, 1922. In that case the Supreme Court held that suit might be brought in the United States district court against the Fleet Corporation to set aside a shipbuilding contract and to secure an accounting; that the Fleet Corporation could be held liable in the same court for breach of a contract for the construction of merchant vessels, and that the Fleet Corporation was not entitled to priority in bankruptcy.

Other Federal courts reached the same conclusion. It was held, for example, that the suits in admiralty act did not prohibit the bringing of actions at law for damages on account of a breach of maritime contracts. (Fleet Corporation *v.* Texas Star Flour Mills, 12 Fed. (2d) 9 (C. C. A. 5th Cir.); John G. Wright & Co. *v.* Fleet Corporation, 285 Fed. 647; Bellbuckle-Armand Schmoll, Inc., *v.* U. S. & Australasia Steamship Co. & Fleet Corporation, 1926 A. M. C. 1200, 217 N. Y. S. 883.)

So, too, it was held that the admiralty act did not bar suits in admiralty in personam against the Fleet Corporation for cargo damage arising from bill of lading contracts. (Fleet Corporation *v.* Banque Russo-Asiatique, London, 286 F. 918; Fidelity Trust Co. *v.* Fleet Corporation, 15 Fed. (2d) 600; Marshall Hall Grain Co. *v.* Fleet Corporation, 14 Fed. (2d) 141; Rosenberg Bros. & Co. *v.* Fleet Corporation, 12 Fed. (2d) 721.)

Similarly it was held that the act did not prohibit the bringing of actions at law or in admiralty against the Fleet Corporation for personal injuries to seamen on vessels operated by the Fleet Corporation. (Stewart *v.* Fleet Corporation, 7 Fed. (2d) 676; Wallace *v.* Fleet Corporation, 5 Fed. (2d) 234; Fleet Corporation *v.* O'Shea, 5 Fed. (2d) 123; Lembeck *v.* Fleet Corporation, 9 Fed. (2d) 558.)

Then, too, the courts decided that the admiralty act did not affect the bringing of actions against the United States under the Tucker Act, although arising out of maritime contracts. (Markle *v.* United States, 8 Fed. (2d) 90; Bennett Day Importing Co. *v.* United States, 8 Fed. (2d) 83; The Barge Peerless, 2 Fed. (2d) 395.)

Likewise, the decisions indicated that the admiralty act did not bar actions against the United States in the Court of Claims for salvage services or upon maritime contracts duly made on behalf of the United States. (Prince Line, Ltd., *v.* United States, 1926, A. M. C. 368; 61 Court of Claims, 632, 643; Venezuelan Meat Export Co., Ltd., *v.* United States, 1923, A. M. C. 255, 58 Court of Claims, 76, 80.)

The courts also held that the provisions of the admiralty act with respect to the time within which actions could be brought did not apply in suits brought apart from it. (Fidelity Trust Co. *v.* Fleet Corporation, 15 Fed. (2d) 600; Marshall Hall Grain Co. *v.* Fleet Corporation, 14 Fed. 141; Stewart *v.* Fleet Corporation, 7 Fed. (2d) 676; Markle *v.* United States, 8 Fed. (2d) 90.)

For the first time on January 6, 1930, the Supreme Court held that the admiralty act provided the sole and exclusive remedy against the United States and the Fleet Corporation for the adjudication of claims arising out of the operation of United States merchant ships. As a result of that decision a number of litigants who had relied on the decisions of the various courts, and who did not bring their suits either in the manner or within the time prescribed by the admiralty act, found that it was too late for them to apply for the reinstatement of their cases.

In general, there are two types of cases involved,—that is claims for personal injury to seamen and claims for loss or damage to cargo on board Fleet Corporation vessels. It is the purpose of this bill to enable those parties who actually brought suit before January 6, 1930, and within the statutory period of limitation but not within the time fixed by the admiralty act, or those who brought suit within the time fixed by the admiralty act, but in the wrong court, to be given their day in court on the merits and within the terms of the admiralty act.

No suits which were brought beyond the statutory period of limitation which applies in common law cases will be revived by this bill. No suits which were dismissed for lack of prosecution will be revived by this bill. No interest will be allowed from the date of the loss. The assessing of damages for personal injury will not be left to a jury, but to a maritime court. Suits will have to be recommenced before the close of the present calendar year.

The committee was particularly interested in the source from which funds would be forthcoming to pay whatever judgments the courts might render in such cases as are revived by this bill, and the committee reports that no appropriation will be necessary to meet such judgments, for the following reasons:

The United States Shipping Board, like every other ship operator, provided itself with protection and indemnity against the claims involved herein. When the United States Shipping Board Fleet Corporation began the operation of merchant ships, it obtained the necessary protection and indemnity insurance by joining the American Protection and Indemnity Club, which was managed by Messrs. Johnson & Higgins, of New York. This P. & I. Club, as it is called, is a mutual association to which the American steamship operators who are members, contribute pro rata according to the tonnage that is insured against such losses, and assessments are made upon the membership according to the extent of the losses sustained. The Fleet Corporation contributed its assessments at stated intervals

out of the freight moneys received from cargo ships and passage money as part of its operating revenue.

In February, 1923, the Fleet Corporation decided to withdraw its tonnage from the P. & I. Club and operate its own protection and indemnity insurance fund. To compensate the Fleet Corporation for its undertaking to dispose of claims for which the American Club might have been liable the Fleet Corporation received from Messrs. Johnson & Higgins the sum of $1,200,000. This sum formed the nucleus of the United States Shipping Board's insurance and indemnity fund. Thereafter, in lieu of paying out of the operating revenue the assessments which would have been paid to the American P. & I. Club, the Shipping Board set aside out of its freight and passage moneys a stated sum per ton of ships in operation in order to be protected and indemnified to the same extent as if it had made the payments to an outside insurance and indemnity agency.

Protection and indemnity insurance being one of the recognized expenses of vessel operation, the Fleet Corporation continued to set aside regular sums for this purpose, and in that way built up a fund for the payment of claims of the character involved in this bill. At one time the fund which the Fleet Corporation had accumulated under this heading amounted to over $8,000,000; and as a result, some $4,000,000 were transferred to other Fleet Corporation activities. This $4,000,000 represents in effect the profit which the Shipping Board had made by carrying its own protection and indemnity insurance.

At the present time the Fleet Corporation has on hand in this insurance fund approximately $3,400,000 with which to pay claims involved in this bill. The United States Shipping Board estimates that there would be revived by this bill 187 cases, the face amount of which is as follows:

Kind of claim	Number of claims	Amount claimed	Kind of claim	Number of claims	Amount claimed
Personal injury	120	$2,655,899.90	False arrest	1	$10,000.00
Cargo	39	1,212,930.74	Wages	3	3,819.00
Death	13	595,000.00	Loss of baggage	3	1,640.00
Illness	6	136,000.00			
Assault	2	12,500.00	Total	187	4,627,789.64

From the past experience of the United States Shipping Board in the disposal of such claims, as appears from their annual reports, a fair estimate of the final liability with respect to claims generally would seem to be about 15 per cent of the face amount claimed. A special analysis of these claims by the Shipping Board and by the committee would indicate that in this particular group of cases it would be conservative to estimate that the total of the judgments would not exceed $1,500,000.

The United States Shipping Board suggested two amendments to the bill which the committee has adopted and with those amendments the Shipping Board indicated its approval of the bill.

MARCH 8, 1932.

Subject: H. R. 7238, Seventy-second Congress, first session. A bill to amend section five of the suits in admiralty act, approved March 9, 1920.

COMMITTEE ON LEGISLATION AND OCEAN MAIL CONTRACTS,
United States Shipping Board:

Your committee has considered the above-entitled bill and begs to report as follows:

That the bill be approved as drawn with the addition at the end thereof of a proviso reading:

"*Provided further*, That there shall not be revived hereby any suit at law, in admiralty, or under the Tucker Act heretofore or heareafter dismissed for lack of prosecution."

T. V. O'CONNOR.
H. I. CONE.

In compliance with the rule there follows a statement of the law showing the proposed change in the law in italics:

SEC. 5. That suits as herein authorized may be brought only on causes of action arising since April 6, 1917, provided that suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises: *Provided further, That the limitations in this section contained for the commencement of suits hereunder shall not bar any suit against the United States or the United States Shipping Board Merchant Fleet Corporation, formerly known as the United States Shipping Board Emergency Fleet Corporation brought hereunder on or before December 31, 1932, if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law or an action under the Tucker Act of March 3, 1887 (24 Stat. 505; U. S. C., title 28, sec. 250, subdiv. 1), was commenced prior to January 6, 1930, and was or may hereafter be dismissed because not commenced within the time or in the manner prescribed in this act, or otherwise not commenced or prosecuted in accordance with it provisions: Provided further, That such prior suit must have been commenced within the statutory period of limitation for common law causes, which obtained in the court in which such prior suit was brought: Provided further, That there shall not be revived hereby any suit at law, in admiralty or under the Tucker Act heretofore or hereafter dismissed for lack of prosecution after filing of suit: and Provided further, That no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized hereunder.*

O